U.S. Department of Labor

Office of Administrative Law Judges
Heritage Plaza Bldg. - Suite 530
111 Veterans Memorial Blvd
Metairie, LA 70005

(504) 589-6201
(504) 589-6268 (FAX)

DATE ISSUED: October 12, 2000

CASE NO.: 1999-LHC-890

OWCP NO.: 08-111686

IN THE MATTER OF:

CHARLES R. POLK

Claimant

V.

GULF COPPER AND MANUFACTURING CORPORATION

Employer

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

Carrier

SUPPLEMENTAL DECISION AND ORDER AWARDING ATTORNEY'S FEES AND DENYING MOTION TO COMPEL

A Decision and Order Awarding Benefits dated February 29, 2000, was issued in this matter. Pursuant to such order, Claimant's Attorney filed a timely application for an Attorney's Fee Award on April 3, 2000.

Employer/Carrier's Counsel filed a timely objection to the application on April 20, 2000.

On April 27, 2000, Counsel for Claimant filed a "Motion to Compel Employer/Carrier's Responses To Certain Interrogatories

and Requests for Production seeking responses to Interrogatory No. 23 and Request for Production No. 14 which generally "deal with the Employer/Carrier's attorney's fees they incurred in defending" the instant case.

An Order issued on April 27, 2000, directing Employer/Carrier to show cause by May 8, 2000, why Claimant's motion should not be granted.

On May 8, 2000, Employer/Carrier filed a response, arguing that Claimant did not comply with the Federal Rules of Civil Procedure by failing to confer or attempting to confer with the party from whom disclosure is sought before filing the motion to compel. Employer/Carrier further argue that, by correspondence dated August 31, 1999, the parties mutually agreed that Employer/Carrier need not respond to Claimant's formal discovery. Moreover, Employer/Carrier contend they have been denied their right to file objections to the discovery requests in light of the mutual agreement. Lastly, Employer/Carrier argue that the discovery information requested is irrelevant, privileged as an attorney-client communication and protected as attorney work product.

On May 15, 2000, Counsel for Claimant filed his Response to Employer/Carrier's Response disputing their representations about a mutual agreement and Claimant's efforts to resolve the discovery issues without court action. Claimant avers that the attorney-client privilege and work product protection are inapplicable and that only "opinion" work product rather than ordinary work product is protected. Counsel relied upon an ABA Journal article as evidence that corporations and insurance companies are sending fee bills to outside auditors for review thus waiving the attorney-client privilege. It is further argued that because Counsel for Employer/Carrier has offered an affidavit in his opposition to the application [Exhibit G] relating to hourly rates of attorneys representing Claimants in Corpus Christi, Texas, he has become an "expert witness" and therefore Claimant is entitled to see <u>all</u> documents that were reviewed by the expert witness.

On May 19, 2000, Counsel for Claimant filed a Response to Employer/Carrier's Objection to his Fee Application and on May 24, 2000, filed a Supplemental Response thereto.

On May 25, 2000, Counsel for Employer/Carrier filed another Response to Claimant's Response asserting that Claimant has

failed to explain legally or factually why Employer/Carrier's fees are relevant. Moreover, Counsel avers that there is no evidence of record that his fee bills were sent to an "independent auditor" for review nor any legal citation to support a waiver of privilege. Lastly, it is argued that it is disingenuous to suggest because Counsel gave testimony about legal fees collected by attorneys in Corpus Christi, Texas, a waiver of all attorney-client privileges.

On June 2, 2000, Counsel for Claimant filed a Reply to Employer/Carrier's Second Response wherein legal precedent is cited in support of a waiver when a communication is disclosed to a third party and since Counsel for Employer/Carrier did not deny his fee bills were audited by an outside firm, "it must be presumed that in fact they have been."

Finally, on June 14, 2000, Employer/Carrier filed an affidavit of Nina Burnett, whose status is unknown, declaring that the fee bills of Counsel for Employer/Carrier were not sent to an outside auditing firm for review.

DISCOVERY

The Rules of Practice and Procedure provide for liberal discovery. See 29 C.F.R. Sections 18.14-18.24. To obtain discovery, the information requested must be relevant or must lead to information which is relevant. 29 C.F.R. Section 18.14(a). Relevancy is broadly construed with common sense rather than measured by the precise issues framed by the pleadings. Leski, Inc. v. Federal Ins. Co. 129 F.R.D. 99 (D.N.J. 1989); LaChemise Lacoste v. The Alligator Co., 60 F.R.D. 164, 170-171 (D. Del. 1973). The scope of relevancy is determined by the facts of each case. Roseberg v. Johns-Manville Corp., 85 F.R.D. 292, 295-297 (E.D. Pa. 1980). The relevancy of a request for discovery with respect to an Employer/Carrier's attorney's billings and fees depends, in part, on objections raised by an opponent to the reasonableness of a fee petition. Davis v. Fidelity Technologies Corp. 180 F.R.D. 329, 334 (W.D. Tenn 1998); Coalition To Save Our Children v. State Board of Education Of The State Of Delaware, 143 F.R.D. 61, 64 (D. Del. 1992).

An administrative law judge has broad power to direct and authorize discovery in support of the adjudication process. 33 U.S.C. § 27(a); 5 U.S.C. § 556(c); Bonner v. Ryan-Walsh

Stevedoring Co., 15 BRBS 321, 325 (1983).

Claimant's Motion to Compel seeks responses to his Interrogatory No. 23 and Request for Production No. 14. Interrogatory No. 23 requests the "amount of attorney's fee" incurred in defending the claim to include "the hourly rate billed, the number of hours billed, a description of the activity performed, who performed the activity and the amount of expenses." Request for Production No. 14 seeks a copy of the "attorney fee statement generated in defending this case."

Employer/Carrier object to Claimant's attorney's fee and expenses as excessive per se. Specifically, Employer/Carrier object to Counsel's hourly rate of $234.05 as excessive in the geographical area in which this case was heard, that Counsel should not recover for work on unsuccessful issues or duplicative work; that travel time and expenses are not recoverable; clerical duties are not compensable; time spent preparing a fee application is not compensable; and "block billing" and excessive time charges are not recoverable. Employer/Carrier further argue that the following service entries are not recoverable: research on undisputed legal theories (TTD); preparation of a pre-hearing brief; drafting an unapproved response to Employer/Carrier's brief; and contingent and present value factor expenses.

In view of Counsel for Employer/Carrier's objections regarding Counsel for Claimant's hourly rate, the number of hours billed for travel and related expenses and contested entries of "block billing" or minimum billing, I conclude that Counsel for Employer/Carrier's hourly rate, travel time and expenses and billing services are minimally relevant to the issue of the reasonableness of Claimant's Counsel's fees and expenses. See Real v. The Continental Group, Inc., 116 F.R.D. 211 (N.D. Cal. 1986); Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933 (1983). Moreover, it has been recognized that "simply the number of hours billed, the parties' fee arrangement, costs and total fees paid do not constitute privileged information or work product in the absence of litigation strategy." Real, at 213-214.

Notwithstanding the foregoing, it is within the discretion of the undersigned to determine the efficacy and judicial efficiency of ordering the discovery of information regarding fees, hours and expenses of opposing counsel. Since Employer/Carrier's objections frame the relevancy of Claimant's

request for discovery, a review of the objections is necessary.

I find there is little correlation between Claimant's discovery items and Employer/Carrier's objections. The similarity of the hourly rate issue is compromised by the contingency nature of the rate sought by Claimant as enhanced by the "present value factor." There is a wide variance between the experience, and arguably the skill, of Counsel for Employer/Carrier and Mr. Price, Counsel for Claimant. Moreover, Employer/Carrier concede an hourly rate of $150.00 an hour for Mr. Barton. Mr. Barton seeks an enhanced rate of $165.00 based on the contingency nature of the case, whereas Counsel for Employer/Carrier's hourly rate is defined and not based on risk or the contingency nature of the case. I find that the hourly rate of Counsel for Employer/Carrier under these circumstances is not relevant in establishing a reasonable hourly rate for Counsel for Claimant.

Furthermore, the remaining time/service objections relate to specific acts or events claimed by Counsel for Claimant which cannot comparatively correlate to similar tasks performed by Counsel for Employer/Carrier, such as objections for work performed on unsuccessful issues; whether travel time and expenses exceed what is normally considered overhead; preparation of the fee petition; alleged clerical duties; and block or minimum billing entries.

Accordingly, given the extant circumstances presented here and the generation of multiple responses between Counsel over Claimant's "Motion To Compel," I have concluded that Claimant's motion should be denied. Such extended discovery would undoubtedly generate further inquiries into collateral issues prolonging the finality of this matter. A request for attorney's fees should not result in a second major litigation. See Hensley, supra, 461 U.S. at 437. Accordingly, Claimant's Motion To Compel is hereby **DENIED**.

THE OBJECTIONS

The Code of Federal Regulations provides that an approved attorney's fee shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of the benefits awarded. 20 C.F.R. §702.132; Newport News Shipbuilding and Dry Dock Co. v. Graham, 573 F.2d

167 (4th Cir. 1978).

In Johnson v. Georgia Highway Express, 488 F.2d 714, 717-719 (5th Cir. 1974), the court listed twelve factors to be considered in the evaluation of fee requests: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or other circumstances; (8) the amount involved; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. These factors have been duly considered in evaluating the attorney's fee petition in this matter.

Furthermore, it is noted that when an administrative law judge reduces the amount of an attorney's fee award from the amount requested, he is required to provide sufficient explanation of his reasons for the reduction. Beacham v. Atlantic & Gulf Stevedores, Inc., 7 BRBS 940 (1978).

In his original fee application, Claimant's attorney requested a fee of $18,244.19 representing 6.40 hours of service by Ed Barton at an hourly rate of $234.05, 71.55 hours of service by Quentin D. Price at an hourly rate of $234.05 and $1,499.78 in expenses for a total of $19,743.97 for services rendered to Claimant.

In opposition, Employer/Carrier initially argue that Claimant is not entitled to an attorney's fee as a matter of law since the prerequisites of Section 28(b) have not been fulfilled.[1]

Employer/Carrier further argue that only two informal conferences were held in this matter. At the first informal conference held on April 17, 1997, the issue presented was reinstatement of temporary total disability and Claimant's request for Dr. Taylor to be his treating physician. It was recommended by the Director that Employer/Carrier reinstate temporary total disability and authorize Dr. Taylor as

[1] Section 28(a) does not apply here since Employer/Carrier voluntarily paid compensation to Claimant.

Claimant's treating physician. Employer/Carrier represent that they agreed to both requests. The second informal conference occurred on October 8, 1998, where the issue presented was "nature and extent of disability, permanency." (Exhibit B to Employer/Carrier's opposition). Claimant contended that he had "not been able to return to work," and claimed compensation for temporary total disability from the date stopped to his maximum medical improvement date and permanent partial disability based on the treating physician's impairment rating. The Director recommended Employer/Carrier's pay permanent partial disability compensation from December 12, 1997 and continuing based on a 24 percent impairment to Claimant's hand. Employer/Carrier did not accept the Director's recommendation but instead offered to compromise the claim at 7% based on the opinion of their expert, Dr. Whitsell. No other recommendation regarding compensation was entered by the Director nor was any other controversy or issue treated by the Director.

The Fifth Circuit Court of Appeals recently re-affirmed its holding in FMC Corp. v. Perez, 128 F.3d 908, 910 (5th Cir. 1997) that Section 28(b) permits claimants to obtain attorney's fees only where: (1) an informal conference has been held on the disputed issue; (2) a written recommendation has issued on that issue; and (3) the employer refuses to accept the recommendation. See STAFTEX STAFFING v. Director, OWCP, ___ F.3d ___ (No. 99-60587)(5th Cir. July 25, 2000).

Thus, Employer/Carrier contend that all issues presented by Claimant for the first time at hearing, but not raised before the Director, should not be the basis for entitlement to a fee for services rendered on those issues. Employer/Carrier assert that the issues raised for the first time at hearing (for which no recommendation was made by the Director and no denial or refusal occurred by Employer/Carrier) are: (1) permanent total disability; (2) Section 10(f) annual adjustments/cost of living increase; (3) Section 14(e) penalties; (4) interest due; (5) entitlement to medical benefits; and (6) attorney's fees.

Claimant argues that the issue of Claimant's permanent total disability was presented to the Director on November 17, 1997 by Mr. Barton, wherein it is reported that Dr. Taylor considered Claimant medically disabled from any occupation requiring heavy, repetitive lifting, or any gripping activities, and in need of re-training. However, the informal conference memorandum indicated the issues to be "temporary total disability, medical." Permanency is not mentioned as an issue nor is

permanent total disability recommended by the Director in the April 23, 1997 memorandum. Although permanency is listed as an issue in the memorandum issued for the October 8, 1998 informal conference, permanent total disability is not specifically mentioned. It is axiomatic that if Claimant reaches maximum medical improvement and is unable to return to work, as alleged, permanent total disability would be manifest. Nevertheless, the Director did not recommend any disposition of the issue and Employer/Carrier did not refuse to comply with or accept such a recommendation.

Accordingly, I find that Counsel for Claimant is not entitled to services provided on the issue of permanent total disability to the extent such services can be identified and eliminated from the fee application. See STAFTEX STAFFING, Slip Opinion page 5.

Regarding the remaining issues alleged by Employer/Carrier to be first raised at the hearing without any recommendation by the District Director or refusal to comply by Employer/Carrier, I find, based on the plain wording of Section 28(b), that none of the issues comprise "a controversy . . . over the amount of additional compensation." These issues are for the most part procedural in nature and not substantive. They become operable by law and are not premised on a recommendation by the Director. The Section 10(f) adjustment automatically applies to compensation benefits payable for permanent total disability. Section 14(e) penalties automatically attach to unpaid installments of compensation in the absence of controversion or excusal. Although interest is not specifically authorized by the Act, it is an accepted practice to assess interest on all past due compensation to assure the employee receives the full amount of compensation due. In the event of a compensable injury, as stipulated to here, Employer is mandated by statute to provide reasonable and necessary medical care. Lastly, attorney's fees can only become germane to a claim when it is successfully prosecuted. Therefore, any discernable work on time services devoted to these issues are compensable.

Degree Of Success

Employer/Carrier contend that Claimant did not achieve success on the issues of temporary total disability and Section 14(e) penalties. Employer/Carrier voluntarily paid Claimant temporary total disability benefits from June 28, 1996 through

August 21, 1997 based on a compensation rate of $200.00. Claimant was awarded temporary total disability from June 28, 1996 to February 3, 1997, the day before he reached maximum medical improvement (MMI). Since Claimant established he could not return to his former job after reaching MMI, it was determined he was entitled to permanent total disability benefits in the absence of a showing of suitable alternative employment. Claimant was additionally awarded permanent total disability benefits from February 4, 1997 to January 19, 1998, when he found suitable alternative employment.

Although Claimant sought a scheduled payment of permanent partial disability benefits based on a 27% impairment rating assigned by his treating physician, Employer/Carrier argued that he was only entitled to an award based on a 7% impairment rating assigned by Dr. Whitsell. The undersigned awarded permanent partial disability benefits based on a 10% impairment.[2] Additionally, a cost of living adjustment under Section 10(f) was awarded as well as interest and medical expenses.

The Courts have recognized that a Claimant must be a "prevailing party" to recover an attorney's fee. Generally, a party is considered to have prevailed "if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." Hensley v. Eckerhart, supra. As a result of this litigation, Claimant received less temporary total disability benefits than Employer/Carrier voluntarily paid, but ultimately five more months of total disability benefits after August 21, 1997, when Employer/Carrier terminated compensation. The only substantive issue on which Claimant did not achieve success was the percentage of scheduled permanent partial disability benefits. Thus, Claimant only achieved partial success prosecuting this matter.

The United States Supreme Court has delineated a two-step inquiry for the award of attorney fees in cases such as this one, where the claimant's success is partial in nature. Hensley

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[2] Employer/Carrier's offer or tender of settlement based on a 7% impairment rating does not extinguish Counsel for Claimant's entitlement to fees since he achieved greater compensation (10%) than that offered or tendered. See Ahmed v. Washington Metropolitan Area Transit Authority, 27 BRBS 24, 26 (1993).

v. Eckerhart, Id. This two-step inquiry has subsequently been applied to fee petitions submitted under the Longshore Act. George Hyman Construction Co. v. Brooks, 963 F.2d 1532, 25 BRBS 161 (CRT)(D.C. Cir. 1992). The Fifth Circuit has cited these cases approvingly, holding that a fee award should be tailored to the claimant's success. Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker], 991 F.2d 163, 27 BRBS 14, 16 n.14 (CRT)(5th Cir. 1993).

1. The First Inquiry

Under the first inquiry of **Hensley**, "if the lawsuit presents unrelated claims - some successful and others not - a court must confine fee awards to work done on the successful claims." Brooks, 25 BRBS at 164 (CRT). This prong "requires a trial court [or ALJ] to conduct an examination of the hours counsel expended on each claim in the case, weeding out work done on unrelated unsuccessful claims from any award." Id. However, if "the successful and unsuccessful claims share a common core of facts or are based on related theories, then . . . a court is to skip the first Hensley inquiry and move to its second." Id., at 167 (CRT)(citation omitted).

Of the issues litigated, Claimant established additional total disability which was permanent in the nature. However, permanent total disability was not an issue, upon which an award of attorney's fee can be sustained in the absence of the Director's recommendation and Employer/Carrier's refusal to comply therewith. See STAFTEX STAFFING, supra, Slip op. 5. Claimant failed to achieve complete success on his contention that he suffered a 27% permanent partial impairment to his hand. These two primary issues share a "common core of facts" and thus are interrelated and the second Hensley inquiry must be considered.

2. The Second Inquiry

"Under the second Hensley inquiry, the fact-finder must then consider whether the success obtained on the remaining claims is proportional to the efforts expended by counsel." Brooks, 25 BRBS at 164 (CRT). If not, then the fact-finder should tailor the fee award to conform with the claimant's degree of success, relative to the scope of the litigation as a whole. Id.

In this regard, the applicable regulations provide that

"[a]ny fee award shall be reasonably commensurate with the necessary work done and shall take into account . . . the amount of benefits awarded." 20 C.F.R. § 702.132(a). Furthermore, the Board, has held that an administrative law judge may properly consider "the extent of [a] claimant's success in rendering his attorney's fee determination." Stowars v. Bethlehem Steel Corp., 19 BRBS 134, 136 (1986)(citing Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, [76 L.Ed. 2d 40](1983). However, although the amount of benefits awarded is a factor to be considered in awarding an attorney's fee, the amount of the fee award is not limited to the amount of compensation gained. Hoda v. Ingalls Shipbuilding, Inc., 28 BRBS 197, 199 (1994)(citations omitted).

After carefully reviewing the record, I find that the major issues in dispute between the parties was Claimant's entitlement to permanent total and scheduled permanent partial disability compensation benefits, which, if successfully prosecuted, would have resulted in entitlement to more than $13,022.50 ($197.67 x 65.88 weeks)(permanent partial compensation only) rather than the award of $4,823.15 based on a 10% impairment rating. Clearly, Claimant's contention of entitlement to compensation was of more importance to the litigation than was the claim for other adjustments or medical benefits. Based thereon, I must find that Claimant's partial success was limited in view of the scope of the claim as a whole.

In recognition thereof, I note that "where the relief, however significant, is limited in comparison to the scope of the litigation as a whole . . . the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount. Stowars, 19 BRBS at 136 (quoting Hensley v. Eckerhart, supra. In such a case, the administrative law judge should set forth "the method which he utilized to compute the amount of the award," such as reducing the hourly rate or the number of hours deemed necessary. Stowars, 19 BRBS at 137.

Based upon Claimant's limited success, I find that a reduction in the amount of attorney time spent by his counsel in pursuit of this claim is appropriate. After considering the factors contained at 20 C.F.R. § 702.132(a), the particular facts and issues of this case, and Claimant's relative degree of success, I find that the number of necessary attorney hours should be reduced by fifty percent (50%). This percent reduction is based upon my analysis of the weight of Claimant's

success in establishing scheduled permanent partial disability and his failure to prevail on the major issue of entitlement to an increased permanent partial disability compensation benefits.

Hourly Rate

In further opposition, Employer/Carrier assert that the requested hourly rate as noted above exceeds the usual billing rate allowed in this particular geographic area and the rate at which awards for claims of this nature are made. Employer/Carrier urge reduction of the hourly rate from $234.05 to $150.00 per hour.

Claimant's Counsel acknowledges in his supporting affidavit that he routinely bills insurance companies $150.00 per hour in situations where his client's defense is being provided by such companies and there is no risk of loss on his part. He represents that $150.00 per hour is "consistent with the rate other trial attorneys in Orange County, Texas charge when they do work on an hourly basis." However, he argues that longshore cases are pursued on a contingency basis and he receives fee payments only if the claim is successfully prosecuted. He seeks an increased hourly rate, based on the risk associated with the potential for loss, of $15.00 per hour or to $165.00. He also requests that a "present value analysis" be applied to the increased hourly rate "to account for the delay in receipt of payment."

Counsel for Claimant has calculated a "present value factor of 1.4185 to compensate for delay in receipt of payment of attorney's fees based on a 6% adjustment each year from the commencement of his services on July 31, 1996 through July 2002, the speculative expected conclusion of the case in the event of appeal. The increase in hourly rate from the "contingent nature" calculation, plus the adjustment for present value, yields an hourly rate of $234.05 which Mr. Barton seeks as an enhanced fee. Similar computations yield an enhanced hourly rate of $234.05 for associate Quentin D. Price.

Claimant's argument of "risk loss" and present value analysis is speculative and without merit. No precedent has been advanced to enhance the value of services for the delay in reimbursement. Indeed, delay in payment of fees does not commence until the fee award becomes final and enforceable, therefore enhancement for delay is inappropriate in this matter.

See Bellmer v. Jones Oregon Stevedoring, 32 BRBS 245 (1998); Johnson v. Director, OWCP, 183 F.3d 1169, 1171 (1999). Furthermore, there were no novel factual or legal issues presented by this case which would warrant a greatly enhanced hourly rate. Moreover, Claimant arguably requests Employer/Carrier to subsidize all prosecutions of claims rather than just the limited success achieved herein by seeking an enhancement based on contingency. Accordingly, such an increase in hourly rates is unwarranted. Instead, I find and conclude than an hourly rate of $165.00 will apply to hours of service awarded to Mr. Barton. Additionally, the $234.05 per hour rate for co-counsel is excessive and is reduced to $135.00 per hour to be applied to the service hours deemed compensable.

Specific Objections

Employer/Carrier object to "duplication of work" as not compensable. The only specific time charges noted are interoffice conferences totaling .50 hours on August 31, 1999, wherein Mr. Barton and Mr. Price conferred with one another concerning discovery responses by Employer/Carrier. On the same day, Mr. Price held a phone conference with Counsel for Employer/Carrier concerning Employer/Carrier's response to discovery. Whether the interoffice conference was held for strategy purposes or "advise and consent," such a conference is considered part of the cost of doing business. Therefore, the .50 hour claimed is denied.

Employer/Carrier object to 1.0 hour charged on September 15, 1999, by Mr. Price for travel to and from Beaumont, Texas from Orange, Texas at an hourly rate of $234.05. Employer/Carrier cite Swain v. Bath Iron Works Corp., 14 BRBS 657 (1982), which held that an out-of-town attorney should not be compensated for travel if there are other attorneys in the hearing city that are competent to handle longshore cases. There are numerous attorneys in the Claimant's resident city and the hearing city that are competent to handle a Longshore claim. Furthermore, I find such travel to be essentially local in nature and travel that should be anticipated when such a case is accepted given the practice over the years of utilizing Beaumont, Texas as a hearing site. Therefore, I find that travel time to and from the hearing is not compensable and reduce the time billed by 1.0 hour.

Employer/Carrier also object to certain clerical duties

charged as attorney time and to the vagueness of such entries. The entry of 2/23/99 for preparation of a letter to Claimant confirming that he will keep an appointment with Dr. Gobel is clearly clerical and not attorney work time. This entry is denied. However, the .25 hour entry of 2/24/99 for receipt and review of correspondence from Counsel for Employer/Carrier is more than a clerical function and is approved, but only for .125 hours under minimal billing discussed below. The 8/25/99 and 9/8/99 entries of .25 hours each for correspondence requesting Claimant schedule an office appointment is also clearly clerical in nature and is denied. Lastly, the .25 hour entry on 3/8/00 advising Counsel for Employer/Carrier of Claimant's change of address is clerical in nature and denied.

Employer/Carrier contend that 3.0 hours charged for preparation of the fee application should be denied as not compensable. Employer/Carrier's reference to 20 C.F.R. § 725.366(b), which relates to fees for representatives in "Claims for Benefits under Part C of Title IV of the Federal Mine Safety and Health Act, As Amended" is clearly misplaced. The Board has recently approved payment of time spent preparing a fee application. See Hill v. Avondale Industries, Inc., 32 BRBS 186 (1998). Therefore, Employer/Carrier's objection is denied.

Employer/Carrier object to specific entries which they contend are excessive in view of Bullock v. Ingalls Shipbuilding, Inc., 29 BRBS 131 (1995). The use of a minimum billing system is not, in and of itself, unreasonable, however, the Fifth Circuit, within whose jurisdiction this matter arises, in Ingalls Shipbuilding, Inc. v. Director, OWCP (Fairley), No. 89-4459 (5th Cir. July 25, 1990)(unpublished) and Ingalls Shipbuilding, Inc. v. Director, OWCP (Biggs), No. 94-40066 (5th Cir. Jan. 12, 1995)(unpublished) held that the writing of a routine one-page letter should take no more than .25 hours and the review of a routine one-page letter should take no more than .125 hours. Therefore, after reviewing Claimant's reply to Employer/Carrier's objections, only the following date entries for receipt and review of or preparation of correspondence will be reduced as indicated:

> 2/3/99 (.25 hours to .125 hours for receipt and review of correspondence dated 1/29/99); 2/25/99 (.25 hours to .125 hours for receipt and review of correspondence); 8/26/99 (.25 hours to .125 hours for receipt and review of correspondence re: proposed stipulations and .25 hours to .125 hours for receipt

> and review of correspondence forwarding lists); 9/1/99 (.25 hours to .125 for receipt of correspondence); and 9/8/99 (.25 hours to .125 hours for receipt and review of correspondence). Entries to which objections were made which were not reduced are approved as reasonable and necessary as charged.

Employer/Carrier's general objections to conferences held with Claimant are denied. As the proponent of the objection, Employer/Carrier failed to establish that such conferences were not held in a reasonable amount of time, particularly for trial preparation and post-decisional matters.

Employer/Carrier object to 6.30 hours charged on 9/10/99 and 5.80 hours charged on 9/14/99 for research. Counsel for Claimant seeks an enhanced fee, presumably based on his expertise, but yet spends in excess of 12 hours performing research on common issues in longshore cases which are not unusual or complex. The hours charged are excessive and will be reduced to 2.0 hours and 1.5 hours, respectively.

Employer/Carrier object to 6.0 hours charged on 9/14/99 for preparation of a pre-hearing brief. Based on Counsel for Claimant's affidavit and for the reasons set forth therein, the hours requested are approved.

Similarly, Employer/Carrier's objection to 3.5 hours charged on 12/10/99 as Claimant's "unapproved response" to Employer/Carrier's unapproved opposition to Claimant's post-hearing brief is specious and rejected.

Employer/Carrier object to $500.00 charged as an expense for a follow-up report and conference call fee by Beaumont Bone & Joint. In his Supplemental Response, Counsel for Claimant represents that the $500.00 charge by Dr. Taylor was for an "expert witness consultation and report" clarifying an impairment rating assessed for Claimant's hand. In the absence of an objective basis to support Employer/Carrier's contention, the $500.00 expense is approved.

Employer/Carrier also object to Claimant's charge of $18.00 for Federal Express services and $51.30 for AT&T charges as overhead expenses. I agree with Employer/Carrier's position. See Brown v. Bethlehem Steel Corp., 20 BRBS 26 (1987). These

expense charges are denied.

Lastly, Employer/Carrier's objection to Claimant's enhanced/contingent expenses totalling $842.48 is granted for reasons discussed above relating to the rejection of the contingency and "present value factor" analysis.

Conclusion

In view of the foregoing, of the hours claimed by Ed Barton (6.40 hours) which were contested, a reduction of .50 hours as minimal billing, .25 hours for clerical work, and .25 for an interoffice conference resulted. Thus, the hours of service attributable to Ed Barton are 5.40 hours. Based on the relative degree of Claimant's success, as weighted above, these service hours will be reduced to 2.70 hours of necessary attorney services (5.40 x .50%) at $165.00 per hour for a total award of $445.50.

The 71.55 hours attributable to Quentin Price are computed in the same matter. Of the hours claimed, .675 hours were reduced as minimum billing, .75 hours as clerical work, .25 for an interoffice conference, 1.0 hour for travel which is considered overhead or cost of doing business and 8.6 hours for legal research, totalling 11.275 hours. Based on the relative degree of Claimant's success, as weighted above, Mr. Price's service hours are reduced to 30.1375 hours (71.55 - 11.275 = 60.275 x 50%) at $135.00 per hour for a total award of $4,068.56.

The fee petition also itemizes $588.50 in expenses as adjusted after objections.

ORDER

IT IS HEREBY ORDERED based on the foregoing that:

1) Employer/Carrier shall pay to Ed W. Barton the sum of $445.50 representing the reasonable value of necessary services performed by him on Claimant's behalf in the prosecution of this matter.

2) Employer/Carrier shall pay to Quentin Price the sum of $4,068.56 representing the reasonable value of necessary services performed by him on Claimant's behalf in the

prosecution of this matter.

3) Employer/Carrier shall pay to the firm of Ed W. Barton the sum of $588.50 representing the reasonable value of necessary expenses expended on Claimant's behalf in this prosecution of this claim.

ORDERED this 12th day of October, 2000, at Metairie, Louisiana.

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LEE J. ROMERO, JR.
Administrative Law Judge